

The Second Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

Parties to Dispute: (

(Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated the controlling agreement when Carmen George Washington Neely, Jr. was assessed ten (10) days suspension commencing August 21, 1980 through August 30, 1980; this was due to the fact that he received a personal injury while dismounting a cab onto unlevel ground.

2. The Seaboard Coast Line Railroad Company is guilty of a procedural defect with the accuser, W. L. McCowan, General Foreman, was not present at the investigation of the accused, Carman Neely.

3. The Seaboard Coast Line Railroad Company is guilty of a procedural defect in that no detailed written statement was taken in accord with General Rule 40; further, that a Company form was used in this case and Carman Neely told which rule he should put down on the form.

4. The Seaboard Coast Line Railroad Company was judging Carman Neely and convicted him prior to investigation. This was a procedural defect.

5. That accordingly, the Seaboard Coast Line Railroad Company be ordered to compensate Carman Neely for each day's pay that he lost due to this violative action; further, that he receive all other benefits he would have accrued or received in a normal flow of circumstances as though he had never been suspended.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

An Investigative Hearing was held on August 26, 1980, to determine the Claimant's responsibility, if any, in connection with a report that he had filed alleging that he injured himself on August 6, 1980. The Claimant was subsequently found guilty of the charge that he violated one of the Carrier's Safety Rules and he was suspended for ten days, from August 21 through August 30, inclusive. The Claimant had been held out of service beginning August 21, pending the results of the Investigation.

Both parties have raised a number of procedural contentions. From the Organization's standpoint, these primarily focus on the role of the Hearing Officer, due process issues, and the fact that the Claimant was withheld from service. The Carrier, for its part, also raises matters of a procedural nature, mainly contending that the Claim before this Board is not the same as the one handled on the property and, therefore, it must be dismissed.

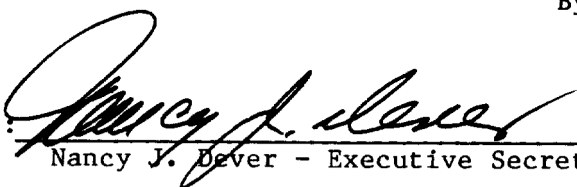
The Board has thoroughly reviewed these contentions and has considered in great depth the forceful arguments of both parties. The testimony adduced at the Hearing establishes that the Claimant was guilty of the charge. The step on the car from which the Claimant descended to the ground was not defective and there was no hole in the ground into which he stepped. Following the finding of guilt to the charge, it cannot be said that the penalty assessed was arbitrary or capricious, given the Claimant's past record.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of April 1986.